

Maine Revised Statutes
Title 10: COMMERCE AND TRADE
Chapter 110: FINANCE AUTHORITY OF MAINE

§1020-A. WASTE MOTOR OIL DISPOSAL SITE REMEDIATION PROGRAM

1. Issue of securities. The authority shall issue revenue obligation securities pursuant to subchapter 3 in an amount sufficient to:

A. Pay the response costs of eligible persons, except that a revenue obligation security may not be issued after July 1, 2011 to fund the payments required by this paragraph; [2011, c. 211, §7 (AMD) .]

B. Establish any capital reserve fund pursuant to section 1053; and [2007, c. 464, §6 (NEW) .]

C. Pay the costs of issuance of revenue obligation securities. [2007, c. 464, §6 (NEW) .]

[2007, c. 464, §6 (NEW); 2011, c. 211, §7 (AMD) .]

2. Payment of proceeds. The authority shall pay proceeds of the revenue obligation securities to or on behalf of the responsible parties in accordance with subsection 4.

[2011, c. 211, §8 (AMD); 2011, c. 211, §27 (AFF) .]

3. Revenue refunding securities. The authority may provide for issuance of revenue refunding securities pursuant to section 1048.

[2007, c. 464, §6 (NEW) .]

4. Certificate of determination. From time to time, the authority shall ascertain from the Department of Environmental Protection, the United States Environmental Protection Agency or the responsible parties, as applicable, the final remedy selection and response costs for each waste motor oil disposal site.

A. When the authority is advised by the Department of Environmental Protection, the United States Environmental Protection Agency or the responsible parties of the issuance of a final remedy selection and that the remedy will be implemented pursuant to a consent decree or other final settlement order or agreement determining substantially final response costs for a waste motor oil disposal site, the authority shall determine those costs for that waste motor oil disposal site that represent the collective share of those persons eligible under subsection 7 to have their share of those costs for the waste motor oil disposal site paid from the proceeds of revenue obligation securities. In determining the amount of response costs incurred by an eligible person prior to the effective date of a consent decree or other final settlement order or agreement, the authority shall rely on a written certificate of costs from the potentially responsible party (PRP) group, if any, at the waste oil disposal site. If a potentially responsible party (PRP) group is not active at a waste oil disposal site, the authority shall rely on a written certificate of costs from each eligible person supported by copies of invoices, receipts or other evidence of payment. The certificate of costs must be made under oath and subject to the provisions of Title 17-A, section 451. In determining the amount of response costs to be incurred by an eligible person after the effective date of a consent decree or other final settlement order or agreement, the authority shall rely on the final allocation of response costs as agreed on by the responsible parties and as reflected in the consent decree or other final settlement order or agreement. [2007, c. 464, §6 (NEW) .]

A-1. [2011, c. 211, §9 (RP) .]

B. With respect to a waste motor oil disposal site, following the determinations made pursuant to paragraph A, the authority shall issue a certificate of determination setting forth the amount of:

- (1) The response costs paid or to be paid with respect to that waste motor oil disposal site;
- (2) The eligible response costs with respect to that waste motor oil disposal site to be paid from the proceeds of revenue obligation securities; and
- (3) The proceeds of the revenue obligation securities to be paid to or on behalf of the responsible parties. [2011, c. 211, §10 (AMD) .]

C. The authority may issue no more than one supplemental certificate of determination with respect to a waste motor oil disposal site, which may provide for the payment from the proceeds of additional revenue obligation securities of an amount equal to no more than 10% of the amount of costs initially certified for that waste motor oil disposal site. The authority is not authorized to issue more than 2 certificates of determination for a waste motor oil disposal site. [2007, c. 464, §6 (NEW) .]

[2011, c. 211, §§9, 10 (AMD) .]

5. Eligibility. For purposes of this section, "person" means any natural person, corporation, partnership or other entity identified as a responsible party at a waste motor oil disposal site. The following persons that contributed waste motor oil to a waste motor oil disposal site and who have been designated by the Department of Environmental Protection or the United States Environmental Protection Agency as responsible parties with respect to any of the waste motor oil disposal sites are eligible to have their share of response costs paid from the proceeds of revenue obligation securities issued pursuant to this subchapter:

A. Those responsible parties that the Department of Environmental Protection or United States Environmental Protection Agency determines are insolvent, unlocated or defunct; [2007, c. 464, §6 (NEW) .]

B. Those responsible parties that the Department of Environmental Protection or United States Environmental Protection Agency determines have a limited ability to pay; [2007, c. 464, §6 (NEW) .]

C. Those responsible parties that the Department of Environmental Protection or United States Environmental Protection Agency determines are responsible for 110 gallons or less of waste motor oil at a waste motor oil disposal site; [2007, c. 464, §6 (NEW) .]

D. The State and any agencies, authorities, departments, boards, commissions or instrumentalities of the State or political subdivisions of the State; [2007, c. 464, §6 (NEW) .]

E. All franchised new car and truck dealers licensed pursuant to Title 29-A, chapter 9, subchapter 3 or the successors in interest of any such franchised new car or truck dealers. The Secretary of State shall certify to the authority those responsible parties that were licensed pursuant to Title 29-A, chapter 9, subchapter 3; [2007, c. 464, §6 (NEW) .]

F. All used car and truck dealers licensed in accordance with Title 29-A, chapter 9, subchapter 3 or the successors in interest of any such used car and truck dealers. The Secretary of State shall certify to the authority those responsible parties that were licensed pursuant to Title 29-A, chapter 9, subchapter 3; [2007, c. 464, §6 (NEW) .]

G. A person or its successor in interest that:

- (1) Performed repairs at repair facilities located in this State on motor vehicles that are owned by 3rd parties;
- (2) Is identified as qualified under this subsection by the potentially responsible party (PRP) group at the waste oil disposal site or, in the case when the response action was or will be undertaken by the State, by the Department of Environmental Protection; and
- (3) Certifies to the authority under oath and subject to the provisions of Title 17-A, section 451 that it is qualified under this subsection; [2009, c. 304, §3 (AMD) .]

H. Any person or its successor in interest that performed repairs on its own fleet of motor vehicles, is identified by the potentially responsible party group at the waste motor oil disposal site or, in the case when the response action was or will be undertaken by the State is identified by the Department of Environmental Protection, as qualified under this subsection and certifies to the authority under oath and subject to the provisions of Title 17-A, section 451 that it is qualified under this subsection. The motor vehicles at all pertinent times must have been registered, garaged and serviced in this State; and [2011, c. 211, §11 (AMD) .]

I. Any person or its successor in interest that performed repairs, at repair facilities located in this State, on special equipment or special mobile equipment, as defined in Title 29-A, section 101, subsections 69 and 70, is identified by the potentially responsible party group at the waste motor oil disposal site or, in the case when the response action was or will be undertaken by the State is identified by the Department of Environmental Protection, as qualified under this subsection and certifies to the authority under oath and subject to the provisions of Title 17-A, section 451 that it is qualified under this subsection. [2011, c. 211, §11 (AMD) .]

Notwithstanding any provision of this subsection to the contrary, at the Ellsworth, Casco and Presque Isle waste motor oil disposal sites identified in section 963-A, subsection 51-E, paragraphs B, C and D, eligible persons include all responsible parties except those enumerated in subsection 6.

[2011, c. 211, §11 (AMD) .]

6. Parties ineligible. The United States of America and its agencies, authorities, departments, boards, commissions and instrumentalities are not eligible to have any share of any of their obligation for response costs covered by revenue obligation securities issued pursuant to this section.

[2007, c. 464, §6 (NEW) .]

7. Registry determinations regarding eligibility. In accordance with the criteria set forth in subsection 5, the authority shall establish a registry of all responsible parties who qualify to have their share of response costs paid pursuant to this subchapter.

A. In order to establish the registry, the authority shall review the list of responsible parties prepared by the Department of Environmental Protection or the United States Environmental Protection Agency with respect to the waste motor oil disposal sites, must have access to all Department of Environmental Protection and United States Environmental Protection Agency records that relate in any way to the volume or composition of materials that may have been deposited in a waste motor oil disposal site and shall confirm which responsible parties meet the criteria established in subsection 5. The confirmed responsible parties must be placed on the registry. In addition, with regard to eligibility, the authority may consider and rely upon information provided by the potentially responsible party (PRP) group conducting response activities at the waste motor oil disposal site. Copies of the registry must be made available to the public at the office of the chief executive officer of the authority. [2007, c. 464, §6 (NEW) .]

B. The authority shall cause the registry for each waste motor oil disposal site to be published 2 times, 7 days apart, simultaneously in the weekend edition of the following newspapers or any of their successors: the Bangor Daily News, the Portland Press Herald, the Kennebec Journal, the Morning Sentinel, the Brunswick Times Record, the Aroostook Republican, the Lewiston Sun Journal and the Biddeford Journal Tribune. [2007, c. 464, §6 (NEW) .]

C. Any responsible party may request reconsideration of any authority decision relating to eligibility for that responsible party. All reconsideration determinations must be made by the Department of Environmental Protection and in accordance with Title 5, chapter 375, subchapter 4. All requests for reconsideration must be mailed, postage prepaid, to the Department of Environmental Protection at the address designated by the authority. All requests for reconsideration must be in writing and include such information as the responsible party desires to draw to the Department of Environmental Protection's attention and must be received by the department no later than 30 days from the 2nd date of

publication of notice in the newspapers identified in paragraph B. The request for reconsideration must be accompanied by a filing fee to the Department of Environmental Protection in the amount of \$500. The decision of the Department of Environmental Protection constitutes final agency action. [2007, c. 464, §6 (NEW).]

D. Any responsible party may appeal a decision by the Department of Environmental Protection to the Kennebec County Superior Court pursuant to Title 5, section 9061 within 30 days of the date of the decision. An appeal under this paragraph is nontestimonial. The record consists solely of written materials reviewed by the Department of Environmental Protection and its decision. [2011, c. 559, Pt. A, §9 (AMD).]

[2011, c. 559, Pt. A, §9 (AMD) .]

8. Rules. The authority shall adopt rules necessary to implement this subchapter. Rules adopted by the authority pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 464, §6 (NEW) .]

9. Liability releases and covenants at certain sites. This subsection applies to the Ellsworth, Casco and Presque Isle waste motor oil disposal sites identified in section 963-A, subsection 51-E, paragraphs B, C and D and referred to in this subsection as "the sites." Upon receipt by the Department of Environmental Protection of the first \$3,500,000 pursuant to section 1020, subsection 3-A, paragraphs D and F:

A. The Department of Environmental Protection or any other agency or instrumentality of the State may not sue or take administrative action against any responsible party at a waste motor oil disposal site under any state or federal statute or common law regarding response costs or environmental conditions related to the release, threatened release or presence of hazardous substances at or from any of the sites prior to the effective date of this paragraph, including, without limitation, past response costs, future response costs, oversight costs, natural resource damages and the cost of assessment; [2011, c. 211, §12 (NEW).]

B. The State, including all of its departments, agencies and instrumentalities, by and through the Attorney General, shall execute a release in favor of all eligible persons at the sites. The release must forever discharge and release all eligible persons from all claims, suits, actions, liabilities, causes of action, demands, costs, damages and expenses of any nature whatsoever, including, without limitation, past response costs, future response costs, oversight costs, natural resource damages and the cost of assessment, whether known or unknown, arising out of, directly or indirectly, a release, threatened release or presence of hazardous substances at or from the sites prior to the effective date of this paragraph; and [2011, c. 211, §12 (NEW).]

C. The eligible persons at the sites are protected from contribution actions or claims regarding those sites. [2011, c. 211, §12 (NEW).]

The State shall include a covenant not to sue and contribution protection in any consent decree or other settlement agreement entered into between the State and federal agencies related to recovery of the State's response costs at the sites.

[2011, c. 211, §12 (NEW) .]

SECTION HISTORY

2007, c. 464, §6 (NEW). 2009, c. 304, §§1-5 (AMD). 2011, c. 211, §§7-12 (AMD). 2011, c. 211, §27 (AFF). 2011, c. 559, Pt. A, §9 (AMD).

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